



California Regulatory Notice Register

REGISTER 2001, NO. 34-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

AUGUST 24, 2001

PROPOSED ACTION ON REGULATIONS

TITLE 2. OFFICE OF THE INSPECTOR GENERAL	<i>Page</i>
<i>Conflict of Interest Code—Notice File No. Z01-0814-06</i>	1411
TITLE 5. BOARD OF EDUCATION	
<i>Award Programs Linked to Academic Performance Index (API)—Notice File No. Z01-0810-02</i>	1411
TITLE 5. BOARD OF EDUCATION	
<i>Criteria for Charter School Petitions—Notice File No. Z01-0810-01</i>	1413
TITLE 10. DEPARTMENT OF INSURANCE	
<i>Workers' Compensation Rates—Notice File No. Z01-0814-05</i>	1415
TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION	
<i>Interim Watershed Mitigation Addendum—2001—Notice File No. Z01-0814-04</i>	1418
TITLE 24. BUILDING STANDARDS COMMISSION	
<i>Building Standards Related to the Seismic Evaluation of Hospitals—Notice File No. Z01-0814-02</i>	1423

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME	
<i>CESA Consistency Determination for Cabazon Wind Energy Project, Riverside County</i>	1425
DEPARTMENT OF HEALTH SERVICES, DRUG USE REVIEW BOARD	
<i>Notice of Public Meeting</i>	1426
FISH AND GAME COMMISSION	
<i>Notice of Findings: California Tiger Salamander</i>	1426

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State.....	1426
Sections Filed, April 11, 2001 to August 15, 2001	1428

(Continued on next page)

*Time-
Dated
Material*

OAL REGULATORY DETERMINATIONS

DEPARTMENT OF CORRECTIONS [2001 OAL Determination No. 7]

Memorandum on “Inmate Participation in Contests” Issued by the Warden of Folsom State Prison

[OAL File No. 99-027]..... 1433

The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 555 Capitol Mall, Suite 1290, Sacramento, CA 95814-4602. The Register is printed by the Office of State Publishing and is offered by subscription for \$302.00 (annual price). To order, call (916) 445-5391. Periodicals postage paid at Sacramento, CA and additional mailing offices. **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Customer Coordinator, Office of State Publishing, 344 N. 7th Street, Room 104, Sacramento, CA 95814-0212.

PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. OFFICE OF THE INSPECTOR GENERAL

NOTICE OF INTENT TO ADOPT A CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN that the Office of the Inspector General intends to adopt a conflict of interest code pursuant to Government Code Sections 87300 and 87306. Pursuant to Government Code Sections 87300–87302, the code will designate employees who must disclose certain investments, income, interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

A written comment period has been established commencing August 24, 2001, and terminating on October 31, 2001. Any interested person may present written comments concerning the proposed code no later than October 31, 2001 to the Office of the Inspector General, 3927 Lennane Drive, Suite 220, Sacramento, CA 95834, Attention: Kathleen Chase, Personnel Manager. No public hearing on this matter will be held unless any interested person or his or her representative requests, no later than fifteen (15) days prior to the close of the written comment period, a public hearing.

The Office of the Inspector General has prepared a written explanation of the reasons for the designations and the disclosure responsibilities and has available all of the information upon which its proposal is based.

Copies of the proposed code and all of the information upon which it is based may be obtained from the Office of the Inspector General, 3927 Lennane Drive, Suite 220, Sacramento, CA 95834. Any inquiries concerning the proposed code should be directed to Kathleen Chase, Personnel Manager, (916) 830-3609.

Adoption of the proposed code will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4

of the Government Code; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons or businesses including small businesses.

The Office of the Inspector General must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the actions is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING Award Programs Linked to API

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Board proposes to amend Article 1.7 (Sections 1031–1039) of Subchapter 4, Chapter 2, Division 1 of Title 5 of the California Code of Regulations, providing guidance on the award programs lined to the Academic Performance Index (API).

PUBLIC HEARING

The State Board will hold a public hearing starting at 1:00 p.m. on Wednesday, October 10, 2001 at 721 Capitol Mall, Room 166. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the agency of such intent. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Board. All written comments must be received no later than the close of the public hearing scheduled to start at 1:00 p.m. on Wednesday, October 10, 2001. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Peggy Peters, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 556
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4440;
FAX number: (916) 657-3844
E-mail: ppeters@cde.ca.gov

AUTHORITY AND REFERENCE

Authority for this regulation is found in Education Code sections 33031, 44650(b), and 52057(a). Education Code section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state. Education Code section 44650(b) gives the State Board authority to establish criteria for determining the eligibility of schools to receive performance awards for teachers and other certificated staff in underachieving schools. Education Code section 52057(a) gives the State Board authority to establish a Governor's Performance Award Program to provide monetary and non-monetary awards to schools that meet or exceed API performance growth targets.

References for this regulation is Education Code sections 44650–44652, 44654(b), 52052, and 52057.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Public Schools Accountability Act of 1999 (PSAA; Education Code sections 52052 et seq.) establishes the Academic Performance Index (API), which serves as the basis for two award programs: (1) the Governor's Performance Award (GPA) Program found in the PSAA; and (2) the Certificated Staff Performance Incentive Act (Education Code sections 44650–44654). In December 2000, January 2001, and March 2001, the State Board of Education (State Board) adopted regulations that guide the reporting of the API and the implementation of the award programs. In developing the regulations, the State Board and the California Department of Education (CDE) have been working with the Governor's Office, the PSAA Advisory Committee, and the Technical Design Group (TDG) consisting of university researchers and school district evaluators convened to provide technical expertise for the PSAA Advisory Committee.

During implementation of the 2000 API award programs, the State Board and CDE identified several provisions in the API award regulations requiring clarification prior to implementation of the 2001 API. The State Board is proposing an emergency regulation to clarify provisions in Section 1032 of Title 5 of the California Code of Regulations.

Specifically, the proposed emergency regulation: provides for the evaluation of the representativeness of a school's tested population in instances when the school's proportion of parental waivers compared to its Standardized Testing and Reporting (STAR) enrollment is greater than 10 percent but less than 20 percent prior to invalidation of the school's API; clarifies the condition under which a school's API will be invalid if the proportion of test-takers in any STAR content area is less than 85 percent; clarifies the definition of a test-taker to include only pupils who attempted to take a STAR content area included in the API; and provides a way that some schools with invalid 2000 APIs could be eligible for API awards in 2001.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed upon local agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private person or business: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on Business: The State Board has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The State Board has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: None, because these regulations are directed to local educational agencies which are not small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative considered by the State Board or that has otherwise been identified and brought to the attention of the State Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The purpose of the proposed regulations is to amend the State Board's guidance for the award programs linked to the API. The State Board does not believe that existing law absent these regulations achieves that objective. Moreover, the State Board has been unable to identify any alternative to the proposed regulations that achieves the objective. The State Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The State Board has made an assessment and determined that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Patrick Chladek
Office of Policy and Evaluations
California Department of Education
721 Capitol Mall, Fourth Floor
P. O. Box 944272
Sacramento, California 94244-2720
(916) 653-5756

Requests for a copy of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based should be directed to:

Peggy Peters, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 556
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4440;
FAX number: (916) 657-3844

Or:

Janis Miller, Regulations Analyst
Telephone: (916) 657-2453;
FAX number: (916) 657-3844

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulation Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed

text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulation Adoption Coordinator at the address or telephone number listed above or accessing the California Department of Education's website at <http://www.cde.ca.gov/regulations>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Audit Response Coordinator or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the State Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the State Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of the Regulation Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which it is made available.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Criteria for the Review and Approval of Charter School Petitions

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Board proposes to add Section 11967.5 to Subchapter 19 of Chapter 11, Division 1 of Title 5 of the California Code of Regulations, providing criteria for the review and approval of charter school petitions.

PUBLIC HEARING

The State Board will hold a public hearing starting at 1:00 p.m. on Wednesday, October 10, 2001 at 721 Capitol Mall, Room 166. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the agency of such intent. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant

to the proposed regulatory action to the State Board. All written comments must be received no later than the close of the public hearing scheduled to start at 1:00 p.m. on Wednesday, October 10, 2001. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Peggy Peters, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 556
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4440;
FAX number: (916) 657-3844
E-mail: ppeters@cde.ca.gov

AUTHORITY AND REFERENCE

Authority for this regulation is found in Education Code sections 33031 and 47605(j)(2). Education Code section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state. Education Code section 47605(j)(2) requires the State Board to adopt criteria to be used for the review and approval of charter school petitions presented to the State Board.

The reference for the proposed regulation is found in Education Code section 47605.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Assembly Bill 544 (Chapter 34, Statutes of 1998) amended provisions of the Charter Schools Act and required the State Board of Education (State Board) to consider approval of charter schools that had previously been denied approval by a local education agency. Specifically, Education Code section 47605 provides the process that the State Board must follow and identifies several factors that the State Board must consider in determining whether the State Board should approve a charter school that had been denied by a local education agency.

Assembly Bill 2659 (Chapter 580, Statutes of 2000) amended Education Code section 47605 to explicitly require the State Board to develop criteria to be used for the review and approval of charter school petitions presented to the State Board. The law requires the criteria to address all elements required for charter approval, and to define "reasonably comprehensive" in a way that is consistent with the intent of the Charter Schools Act. Further, the law requires, upon satisfactory completion of the criteria, that the State Board adopt the criteria on or before June 30, 2001.

The proposed regulation provides criteria for the State Board review and approval of charter school petitions. The regulation provides the requirements for

approval of a charter school petition for charter school petitioners who may be considering submission of a denied charter petition to the State Board.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed upon local agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private person or business: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on Business: The State Board has made an initial determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: The State Board has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: None, because these regulations are directed to local educational agencies which are not small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative considered by the State Board or that has otherwise been identified and brought to the attention of the State Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The purpose of the proposed regulations is to provide criteria for the review and approval of charter school petitions. The State Board does not believe that existing law absent these regulations achieves that objective. Moreover, the State Board has been unable to identify any alternative to the proposed regulations that achieves the objective. The State Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

**ASSESSMENT REGARDING CREATION OR
ELIMINATION OF JOBS IN CALIFORNIA**

The State Board has made an assessment and determined that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

Colin Miller
School Fiscal Services Division
California Department of Education
560 J Street, Suite 170
P. O. Box 944272
Sacramento, California 94244-2720
(916) 327-5929

Requests for a copy of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based should be directed to:

Peggy Peters, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 556
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4440;
FAX number: (916) 657-3844

Or:

Janis Miller, Regulations Analyst
Telephone: (916) 657-2453;
FAX number: (916) 657-3844

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

The Regulation Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulation Adoption Coordinator at the address or telephone number listed above or accessing the California Department of Education's website at <http://www.cde.ca.gov/regulations>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Audit Response Coordinator or viewed on the website.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the public hearing, the State Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the State Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of the Regulation Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which it is made available.

**TITLE 10. DEPARTMENT
OF INSURANCE****STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE****NOTICE OF PROPOSED ACTION
AND NOTICE OF PUBLIC HEARING
File No. RH0101611**

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates.

SUBJECT OF HEARING

Notice is hereby given that the insurance commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization; (2) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995; and (3) amendments to the California Workers' Compensation Experience Rating Plan—1995. The hearing will be held in response to a filing, submitted on July 31, 2001, by the Workers' Compensation Insurance Rating Bureau of California ("Bureau").

AUTHORITY AND REFERENCEUniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations were promulgated by the insurance commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the insurance commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the insurance commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the insurance commissioner. Accordingly, the pure premium rates issued or approved by the insurance commissioner are advisory only.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the insurance commissioner for review.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the Bureau's filing, at the following date, time and place:

**September 26, 2001—9:30 A.M.
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California**

INFORMATIVE DIGEST

Pursuant to Insurance Code Section 11734 and Insurance Code Section 11751.5, the insurance commissioner has designated the Workers' Compensation Insurance Rating Bureau of California as his rating organization and statistical agent. As the designated rating organization and statistical agent, the Bureau has developed and submitted for the insurance commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 and California Workers' Compensation Experience Rating Plan—1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan—1995 and the California Workers' Compensation Experience Rating Plan—1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the insurance commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classifica-

tion system if it is filed with the insurance commissioner 30 days prior to its use and is not disapproved by the insurance commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the uniform statistical reporting plan or the classification system developed by the Bureau and approved by the insurance commissioner.

The pure premium rate revision amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, which contains the standard classification system developed by the Bureau, and the California Workers' Compensation Experience Rating Plan—1995 are detailed in the Bureau's filing letter and summarized below.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the Bureau has proposed advisory pure premium rates for approval of the insurance commissioner effective with respect to new and renewal policies with anniversary rating dates on or after January 1, 2002. The proposed advisory pure premium rates are, on average, 8.5% greater than the advisory pure premium rates approved by the insurance commissioner that were effective January 1, 2001.

The Bureau advises in its cover letter that due to recently observed volatility in paid loss development, it will review accident year experience valued as of June 30, 2001, as soon as it is received and, if appropriate, amend the pure premium rates proposed in its filing. The Bureau also advises that the proposed increase in pure premium rates does not reflect the cost of benefit increases currently under consideration by the Legislature or changes to the Inpatient Hospital Fee Schedule recently adopted by the Division of Workers' Compensation. If the changes to the fee schedule or enacted legislation significantly impact the cost of benefits, the Bureau will amend its filing to reflect the impact on both the pure premium rates proposed in its filing and the approved pure premium rates currently in effect.

**AMEND CALIFORNIA WORKERS'
COMPENSATION UNIFORM STATISTICAL
REPORTING PLAN—1995**

The Bureau recommends the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 be approved with respect to new and renewal policies with anniversary rating dates on or after January 1, 2002:

- (a) Editorial changes;
- (b) Amend to facilitate the electronic submission of policy data;
- (c) Amend the treatment of payroll-remuneration for automobiles to exclude from the definition of

“payroll” amounts paid to employees as reimbursement for the business use of a personal automobile, provided such amounts do not exceed the IRS standard mileage rate. This change is consistent with current practice;

- (d) Amend the minimum and maximum payroll for executive officers, partners, individual employers, and members of a limited liability company that will be used for reporting purposes to reflect wage inflation;
- (e) Amend the treatment of payroll (remuneration for drivers and their helpers’ payroll to provide that when drivers furnish their own vehicles and pay the operating expenses in connection therewith, no less than 60% of the total amount paid for the hire of such vehicles shall be deemed to be payroll when the gross vehicle weight is less than 10,000 pounds;
- (f) Amend to adjust the wage thresholds for several dual construction classifications to reflect wage inflation;
- (g) Delete Electronics Industry Classification 3579, “Telephone or Telephone Equipment Mfg.”, as operations currently assigned to this classification are not sufficiently distinct from those assigned to Electronics Industry Classification 3578, “Radio or Television Broadcasting/Receiving Equipment Mfg.”;
- (h) Amend additional classifications to be used for statistical reporting purposes;
- (i) Amend to facilitate the electronic submission of unit statistical report data; and
- (j) Amend to increase the minimum threshold for policies to be audited at least once a year from \$10,000 to \$12,000 to reflect the changes in average wage level and insurer rates which has occurred since the minimum threshold for audit was last amended in 1993.

AMEND CALIFORNIA WORKERS’ COMPENSATION EXPERIENCE RATING PLAN—1995

The Bureau recommends the following revisions to the California Workers’ Compensation Experience Rating Plan—1995 be approved with respect to new and renewal policies with anniversary rating dates on or after January 1, 2002:

- (a) Amend to increase the minimum threshold for policies to be audited;
- (b) Amend the eligibility requirement to reflect both the proposed change in pure premium rate level and the average change in wage level that have occurred since the eligibility requirement was amended on January 1, 2001;

- (c) Amend to facilitate the electronic publication of experience rating forms and data;
- (d) Amend to facilitate the electronic submission of unit statistical report data; and
- (e) Amend the expected loss rates, D-ratios and average death value to reflect the most current data available.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The insurance commissioner has determined that there will not be a cost increase and there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein.

IMPACT ON HOUSING COSTS

The insurance commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

IMPACT ON SMALL BUSINESSES

The insurance commissioner has determined that the proposed regulations will not have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The insurance commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the insurance commissioner expects that the proposed regulations will not have a significant effect on private persons or entities.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the insurance commissioner prior to the public hearing on the proposed amendments contained in the Workers' Compensation Insurance Rating Bureau's filing. Such comments should be addressed to:

California Department of Insurance
Attention: Larry C. White, Senior Staff Counsel
45 Fremont Street, 24th Floor,
San Francisco, California 94105
(415) 538-4423

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the insurance commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the insurance commissioner at the address listed above no later 4 P.M. on September 28, 2001

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The insurance commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the Workers' Compensation Insurance Rating Bureau's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above).

ACCESS TO COPIES OF PROPOSED REGULATIONS AND STATEMENT OF REASONS, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 45 Fremont Street,

22nd Floor, San Francisco, California 94105, between the hours of 9:00 A.M. and 4:30 P.M., Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the insurance commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the insurance commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the insurance commissioner's action will be sent to all persons on the insurance commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the commissioner's action.

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

NOTICE OF PROPOSED RULEMAKING

Interim Watershed Mitigation Addendum—2001

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to adopt the following new sections of Title 14 of the California Code of Regulations (14 CCR):

§§ 916.13(936.13, 956.13) Interim Watershed Mitigation Amendment (IWMA)

§§ 916.13.1(936.13.1, 956.13.1) Consultation

§§ 916.13.2(936.13.2, 956.13.2) IWMA Evaluation

§§ 916.13.3(936.13.3, 956.13.3) Contents of IWMA

§§ 916.13.4(936.13.4, 956.13.4) Standards for IWMA Preparation

§§ 916.13.5(936.13.5, 956.13.5) Submission of an IWMA as Part of a Plan

§§ 916.13.6(936.13.6, 956.13.6) Compliance Monitoring and Expanded Completion Report

§§ 916.13.7(936.13.7, 956.13.7) Subsequent Plans Within the IWMA Area

§§ 916.13.8(936.13.8, 956.13.8) Equivalent Analysis

The Board proposes to amend the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

§§ 895 Abbreviations Applicable throughout the Chapter

§§ 895.1 Definitions Applicable throughout the Chapter

PUBLIC HEARING

The Board will hold a public hearing starting at 1:00 P.M. On October 11, 2001 in room 101, Building 8, 714 P Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on October 8, 2000. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review. All written comments shall be submitted to the following address:

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: James L. Mote
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) §§ 4551, 4551.5 and 4553 authorizes the Board to adopt such rules and regulations as it determines are reasonable necessary to enable it to implement, interpret, or make specific §§ 4582, 4582.5 and 4593.3 of the Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the Legislature's concern throughout the state relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In previous rule making actions the Board adopted rules, which set forth, regulations for the protection of impaired water quality designated as having Impaired water quality values. The Board defined the Impairment. These regulations were intended to move from a project by project analysis of impacts and mitigation development to a watershed level approach. These regulations are currently being proposed to be extended and terminate on December 31, 2002. The Board has developed pilot rules to continue towards the provision of watershed level analysis. These rules are to apply statewide. They are a test of watershed level analysis targeted at the maintenance and restoration of anadromous salmonids.

Several species of anadromous salmonids (chinook salmon, steelhead and coho salmon) have been listed throughout their range in California under either the Federal or California Endangered Species Act since December 1995. Since the listings, the Board of Forestry (BOF) has adopted several rule packages that provide generic protective measures for anadromous salmonids across their entire range.

The BOF recognizes that it is beneficial for both anadromous salmonids and timberland owners to

focus on site-specific factors that affect freshwater habitat for anadromous salmonids. Furthermore, the BOF recognizes that it may be desirable to address these factors in a broader context than individual harvest plans.

- The IWMA rule package provides a regulatory process that allows the Department, other responsible agencies, and timberland owners to identify site-specific conditions that are impacting anadromous salmonids within the broader context of a logical hydrologic unit.
- The IWMA rule package promotes consultation between the responsible agencies, and the timberland owner to address specific limiting factors for anadromous salmonids within the evaluation area prior to the development and review of individual harvest plan proposals.
- The IWMA rule package provides timberland owners with an option to the existing generic forest practice rules, that focuses harvest plan and mitigation design on site-specific factors limiting anadromous salmonids within the evaluation area.
- The IWMA rule package provides an opportunity for the Department, other responsible agencies, and timberland owners to conduct a pilot test on the feasibility of voluntary approach to watershed evaluation.

14 CCR § 895

An abbreviation is added to this section for the Interim Watershed Mitigation Addendum (IWMA).

14 CCR § 895.1

A definition is added to this section for “limiting factors for Anadromous Salmonids”.

14 CCR §§ 916.13 (936.13, 956.13)

The IWMA is provided as an alternative to compliance with the rules adopted for the protection of watersheds with impaired water quality. The purpose of the IWMA is described as focusing on watershed evaluation and the development of site-specific mitigation for limiting factors for anadromous salmonids. It is made clear that practices proposed in the IWMA must provide for the protection of anadromous salmonids.

14 CCR §§ 916.13.1 (936.13.1, 956.13.1)

The IWMA submitter shall conduct a pre-consultation with the reviewing agencies for the watershed that is to be evaluated. This includes responsible local, state, and federal agencies. Where the submitter selects this option the results must be provided to the Director of the Department of Forestry and Fire Protection (Director) at the time the Timber Harvesting Plan (THP) is submitted.

14 CCR §§ 916.13.2 (916.13.2, 956.13.2)

The IWMA is to provide the required information for an established evaluation area which is defined as a logical hydrologic unit. The general area is to be a logical hydrologic unit.

14 CCR §§ 916.13.3 (936.13.3, 956.13.3)

The contents of the IWMA are described. The IWMA is to pay primary attention to the area owned or controlled by the landowner. The contents include the area to be evaluated; limiting factors on anadromous salmonids, mitigation measures to be applied, and an evaluation of the implementation and initial effectiveness of those measures based on monitoring information.

14 CCR §§ 916.13.4 (936.13.4, 956.13.4)

The standards for the preparation of the IWMA are set forth. The standards include the basis of information, support for proposed mitigation, and the use of information in future IWMAs.

14 CCR §§ 916.13.5 (936.13.5, 956.13.5)

The guidance for the submission of an IWMA is established in this section. IWMAs are to be submitted as part of a THP. They are to be provided in standard digital format. They are to define what portions of the interim watershed rules they are to replace.

14 CCR §§ 916.13.6 (936.13.6, 956.13.6)

The submission of an expanded completion report, which includes results of effectiveness monitoring, is set forth.

14 CCR §§ 916.13.7 (916.13.7, 956.13.7)

The use of the IWMA in future THPs is described. An IWMA may be used with future THPs once the original THP has been approved.

14 CCR §§ 916.13.8 (936.13.8, 956.13.8)

There are two instances where another document may be considered as a replacement for the IWMA. That is a long-term plan recognized by the Board in regulation and an approved Habitat Conservation Plan.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None

- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant statewide economic impact on business, including the ability of California businesses to compete with businesses in other states: The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: Assessment cost will depend on the scope of analysis, complexity, intensity of review, watershed scale, data availability, and many other variables. It will also have to consider what the costs would have been to prepare the watershed assessment portion of the existing Cumulative Effects Analysis (Board rule addendum No. 2).

The cost of implementing mitigation is also difficult to assess. It is possible that a watershed evaluation could define operational practices, which would result in cost savings over prescriptive practices required under existing rules. It may also result in requiring operational practices with a greater cost than that required under existing rules. Since the mitigations set forth under these rules are site specific it is almost impossible to guess what those mitigations would be or their actual cost. Regardless of these difficulties the Board contacted landowners and found the following.

The Interim Watershed Mitigation Addendum (IWMA) rule package proposal is a focused limiting factor mitigation addendum designed to address protective measures for listed anadromous salmonids in association with forestry operations. While the proposed process extends the evaluation area beyond what is required for a timber harvest plan (THP) under the current Forest Practice Rules (FPRs), it is not a watershed assessment.

In preparing the following economic analysis, the Board of Forestry staff contacted several industrial landowners to ascertain the potential costs and benefits associated with the IWMA proposal. The IWMA rule package proposal does not create any additional mandatory FPRs. It provides a timberland owner with an optional approach that focuses on site-specific conditions and mitigation measures. Since the IWMA process is not mandatory it is anticipated that landowners will initially assess whether there are economic or management benefits associated with an IWMA analysis before initiating the process and engaging the agencies in consultation.

Preliminary economic analysis indicates that a landowner choosing to undertake an IWMA analysis will likely incur additional costs over the current THP process. This includes the development of the currently required THP Cumulative Effects Addendum. The IWMA process covers a larger geographical area than the normal timber harvest plan. The landowner will initially have to gather and analyze more data and information. The IWMA process may require more on-the-ground analysis than what is required under the current Forest Practice Rules and the timber harvest planning and approval process. Furthermore, a landowner incurs more risk up front. The IWMA analysis is not a permit and does not provide a submitter any rights. It is not reviewed and approved by the Department independently but is submitted as an addendum to a proposed THP. Additional factors that will affect the costs associated with an IWMA analysis include size of the evaluation area, percent of the evaluation area owned by the party submitting the IWMA, amount of existing data, how much additional data is required by the consulting agencies, access to information from adjacent landowners, and amount and proximity of watercourses within the evaluation area.

Costs may be offset by the benefits derived from up-front consultation with the responsible agencies before initiation of the THP process. The landowner may also derive some relief from the existing *Protections for Threatened and Impaired Watersheds, 2001* rules by proposing more efficient mitigation measures for anadromous salmonids within the evaluation area. IWMA analyses that cover large areas may provide the landowner a benefit in terms of economy of scale. The landowner may be able to incorporate the IWMA analysis in more than one timber harvest project allowing the landowner to amortize costs over several projects. Finally, the information gathered during the IWMA process may be beneficial to the landowner during the THP review and approval process.

Based on the information provided by the landowners, estimated costs to complete an IWMA analysis range from \$1.75 per acre to \$11.50 per acre. Key factors include how much information and analysis is required by the consulting agencies, size of the evaluation area and economy of scale, and whether you could amortize costs over more than one THP within the evaluation area.

- Significant effect on housing costs: None
- Assessment Statement: The regulatory proposal will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing

businesses within California; or (3) affect the expansion of businesses currently doing business within California.

- Effect on small business: The Board of Forestry has determined that the proposed rules may have an effect on small businesses. However as shown in the discussion on cost impacts on representative private persons or businesses, it is difficult to determine what that impact would be. Further since compliance with the rule is voluntary there could be no impact if no one utilizes these rules.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulatory proposal does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: James L. Mote
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418 or,
(916) 653-8007

The designated backup person in the event Mr. Mote is not available is Daniel Sendek, Assistant Executive Officer of the Board of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared it will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition

to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

NOTE: The following notice of proposed regulatory action is being published pursuant to Government Code section 11356(b) and has not been reviewed by OAL for compliance with Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Pursuant to Health and Safety Code section 18935, the Building Standards Commission is required to review the notice for statutory compliance with Article 5 and submit it to OAL for the sole purpose of inclusion in the California Regulatory Notice Register.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PUBLIC HEARING AND PROPOSED CHANGES IN BUILDING STANDARDS OF THE OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT REGARDING SENATE BILL 2006 MANDATE (Stats. 2000, c. 851) CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of Office of Statewide Health Planning and Development (Office) proposes to adopt, approve, codify, and publish building standards contained in the California Code of Regulations (CCR), Title 24, Part 1. The Office is proposing building standards related to the seismic evaluation of hospitals.

PUBLIC COMMENT PERIOD OR HEARING

A public hearing has not been scheduled; however, written comments will be accepted from August 24, 2001, until 5:00 p.m. on October 8, 2001. Please address your comments to Stan Nishimura, California Building Standards Commission, 2525 Natomas Park Drive, Suite 130, Sacramento, CA 95833. Written Comments may also be faxed to (916) 263-0959 or E-mailed to cbsc@dgs.ca.gov.

Pursuant to Government Code Section 11346.5 (a)17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.3. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 130005, 130010, 130020, 130050, 130060, 130063 130065 and 130070. The Office is proposing this regulatory action based on Health and Safety Code Sections 1275, 18949.3, 127010, 127015 and 130005.

INFORMATIVE DIGEST

Summary of Existing Laws

The Alfred E. Alquist Hospital Facilities Seismic Safety Act (Alquist Act) of 1983 establishes, under the jurisdiction of the Office, a seismic safety building standards program for general acute care hospitals constructed on or after March 7, 1973. Statutes of 1994, Chapter 740 (SB 1953) amended the Alquist Act. These statutory requirements are now chaptered into law in Health and Safety Code Sections 130000 through 130070 et seq.

These provisions mandate the Office to develop procedures and regulations to ensure that by January 1, 2030 all general acute care hospitals in California are substantially compliant with the Alquist Act. The intent is that these compliant facilities will be reasonably capable of providing services to the public after a seismic event. The law required the Office to develop the seismic safety program regulations in two phases. The Phase I regulations became known as the Seismic Evaluation Procedure Regulations. The Phase II regulations became known as the Seismic Retrofit Regulations. The Seismic Evaluation Procedure Regulations serve as the basis for this proposed action.

Summary of Existing Regulations

Existing regulations directly related to this proposed action are codified in Title 24, Part 1, Chapter 6 and Part 2, Chapter 16B. These regulations represent the Seismic Evaluation Procedure Regulations and the Seismic Retrofit Regulations required by the Alquist Act (Chaptered into Health and Safety Code Sections 130000 through 130070 et seq.). The regulations' purpose is to ensure that all general acute care licensed hospitals in California are substantially compliant with the Alquist Act and will be reasonably capable of providing services to the public after a seismic event. The regulations include both the evaluation procedures for hospital owners to submit seismic evaluation reports, compliance plans and schedules to the Office as required by the Alquist Act.

Summary of Effect

The effect of the proposed regulations constitutes amendments to the Seismic Evaluation Procedure Regulations (Phase I) mandated by SB 1953. The purpose of these regulations is to ensure that by January 1, 2030 all licensed general acute care hospitals in California are compliant with the Alquist Act and will be reasonably capable of providing services to the public after a seismic event. This proposal includes revisions to the Phase I Regulations.

Senate Bill 2006 (SB 2006, Chapter 851, Statutes of 2000) authorizes hospitals located in specific areas to request an exemption from the Nonstructural Performance Category 3 requirements until January 1, 2030. The proposed language defines and clarifies the conditions and requirements for compliance with the statute. These proposed regulations provide the procedure for licensed general acute care hospitals in California meeting specific criteria to request an exemption from the January 1, 2008 NPC-3 compliance date until January 1, 2030.

These proposed regulations will amend Title 24, Part 1, Chapter 6.

Comparable Federal Statute or Regulations

There are no comparable federal statutes or regulations.

Policy Statement Overview

The objective of the Seismic Safety Regulations is to ensure that all general acute care licensed hospitals in California are substantially compliant with the Alquist Act and will be reasonably capable of providing services to the public after a seismic event.

**OTHER MATTERS PRESCRIBED BY STATUTE
APPLICABLE TO THE AGENCY OR TO
ANY SPECIFIC REGULATION OR
CLASS OF REGULATIONS**

None

**MANDATE ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

The Office has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **No**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other nondiscretionary cost or savings imposed on local agencies: **No**
- E. Cost or savings in federal funding to the state: **No**
Estimate: N/A

**INITIAL DETERMINATION OF NO
SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES**

The Office has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact on businesses, including small businesses, or the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

The specific intent of this submittal is to clarify existing regulation language. This submittal specifies which provisions from existing regulations a hospital facility should utilize to comply with the seismic evaluation procedure requirements. Additionally, editorial corrections were made to properly reference "renumbered" code sections, or the appropriate edition of the building code. Therefore, no adverse impact to business results from this submittal.

Therefore, any impact would be the result of prior regulatory language already in effect.

**FINDING OF NECESSITY FOR THE PUBLIC'S
HEALTH, SAFETY, OR WELFARE**

The proposed regulations are an amendment to the seismic regulations required under the auspices of the Alquist Act requiring all general acute care hospital buildings in California to be substantially compliant with the provisions of the Act by January 1, 2030.

**COST IMPACT ON REPRESENTATIVE
PRIVATE PERSON OR BUSINESS**

The Office is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**ASSESSMENT OF EFFECT OF REGULATIONS
UPON JOBS AND BUSINESS EXPANSION,
ELIMINATION OR CREATION**

The Office has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California. N/A
- The creation of new businesses or the elimination of existing businesses within the State of California. N/A
- The expansion of businesses currently doing business with the State of California. N/A

**INITIAL DETERMINATION OF SIGNIFICANT
EFFECT ON HOUSING COSTS**

The Office has made an initial determination that this proposal would not have a significant effect on housing costs.

(The CBSC contact designated below will make the Office's evaluation of the effect of the proposed regulatory action on housing costs available upon request.)

CONSIDERATION OF ALTERNATIVES

The Office must determine that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**ADMINISTRATIVE OR PROCEDURAL INQUIRIES
CONCERNING THE PROPOSED ACTION MAY
BE DIRECTED TO:**

Stan Nishimura or Thomas Morrison
California Building Standards Commission
2525 Natomas Park Drive
Sacramento, CA 95833
(916) 263-0916

TECHNICAL QUESTIONS ON THE SUBSTANCE
OF THE PROPOSED ACTION MAY BE DI-
RECTED TO:

Sue Botelho
Office of Statewide Health Planning
and Development
1600 9th Street, Room 420
Sacramento, CA 95814
(916) 654-2012

INTERNET ACCESS STATEMENT

Materials published or distributed through the California Building Standards Commission's website concerning the proposed action may be obtained at www.bsc.ca.gov.

AVAILABILITY OF
RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the above office contact person.

Interested parties may obtain a copy of the Final Statement of Reasons (FSOR) once it has been prepared, by making a written request to the above office contact person. In addition, the FSOR may be obtained on the California Building Standards Commission's website at www.bsc.ca.gov.

STATEMENT OF AVAILABILITY OF
INITIAL STATEMENT OF REASONS
AND EXPRESS TERMS

The office has prepared an Initial Statement of Reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the statement of reasons and the express terms may be obtain on the California Building Standards Commission website at www.bsc.ca.gov

Or

By contacting:

Lorna Yee
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Voice (916) 263-0916
Facsimile (916) 263-0989

POST-HEARING MODIFICATIONS TO
THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed regulations substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and

notice of proposed regulatory action. If modifications are made, the full text of the proposed action with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified regulations during the 15-day period.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**CESA CONSISTENCY DETERMINATION FOR
Cabazon Wind Energy Project,
Riverside County**

The Department of Fish and Game ("Department") received notice on August 8, 2001 that Cabazon Wind Partners, LLC proposes to rely on consultations between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act ("CESA"). The project consists of creating 65 wind turbine generators, an underground power transmission system, access roads, a storage yard, an electrical substation and a maintenance building in Riverside County, California. The Cabazon Wind Energy Project is located about one mile east of the community of Cabazon and ten miles west of central Palm Springs, along the San Gorgonio River within the San Gorgonio Pass in Riverside County.

The U.S. Fish and Wildlife Service, on August 6, 2001, issued to the Army Corps of Engineers, a no jeopardy federal biological opinion FWS-ERIV-1289.2 which considers the state and federally threatened desert tortoise (*Gopherus agassizii*), Coachella Valley fringe-toed lizard (*Uma inornata*), and the Peninsular bighorn sheep (*Ovis canadensis*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, Cabazon Wind Partners, LLC is requesting a determination on whether the federal biological opinion FWS-ERIV-1289.2 is consistent with CESA. The consistency determination is requested for the desert tortoise, Coachella Valley fringe-toed lizard, and the bighorn sheep which are both federally and state listed species.

If the Department determines that the federal biological opinion is consistent with CESA, Cabazon Wind Partners, LLC will not be required to obtain an incidental take permit under CESA for the proposed project.

**DEPARTMENT OF
HEALTH SERVICES,
DRUG USE REVIEW BOARD**

Notice is hereby given that the Drug Use Review (DUR) Board will conduct a public meeting at 714 P Street, First Floor Auditorium, Sacramento, CA beginning at 10 a.m. on Tuesday September 18th 2001 at 10 a.m.

Agenda:

1. DUR Drug Information/Alert Incidence Updates
2. DUR Program Enhancements
3. DUR Projects Overview and Update
4. DUR Education Articles
5. Operational Issues

Speaker Request Forms will be available at the meeting or may be obtained by contacting Electronic Data Systems Corporation, 3215 Prospect Park Drive, Rancho Cordova, CA 95670. Attention: DUR Pharmacist Jude Simon-Leack, Pharm.D., and MSW.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2076.5 of the Fish and Game Code, the California Fish and Game Commission, at its August 3, 2001, meeting in Sacramento, made a finding that the petitioned action to emergency list the California Tiger Salamander (*Ambystoma californiense*) as endangered is not warranted for the following reasons:

1. There is insufficient information to indicate that there is any emergency posing a significant threat to the continued existence of the species;
2. There is insufficient evidence to suggest that an emergency regulation is necessary for the immediate conservation, preservation or protection of the California Tiger Salamander;
3. The Commission has directed the Department to thoroughly review the petition to list the California Tiger Salamander as an endangered species as required in Sections 2072.3 and 2073.5 of the Fish and Game Code, and to report to the Commission if at any time during the review process it believes that emergency action is warranted.

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

**BOARD OF EQUALIZATION
Permits**

This regulatory action defines the term "concessionaire" and clarifies when a retailer is liable for the tax deficiencies derived from unreported sales made by a concessionaire operating within the perimeter of the retailer's business.

Title 18
California Code of Regulations
AMEND: 1699
Filed 08/08/01
Effective 09/07/01
Agency Contact: Diane G. Olson (916) 322-9569

**BOARD OF PSYCHOLOGY
Examinations**

The Board of Psychology is amending the captioned section pertaining to examinations of psychologists. The ending date for the time period for the passing score administered by the Board was changed from 10-18-1985 to 10-18-95 as an editorial correction because 10-18-95 was the last test given a Board administered score.

Title 16
California Code of Regulations
AMEND: 1388(f)
Filed 08/13/01
Effective 09/12/01
Agency Contact: Kathy Bradbury (916) 263-0712

**BUREAU OF AUTOMOTIVE REPAIR
Consumer Assistance Program Applications (CAP/
APP 01/01)**

The Department of Consumer Affairs, Bureau of Automotive Repair, has amended its Consumer Assistance Program Application (CAP/APP new revision 04/01). Its incorporation by reference is being changed in the captioned section due to this new amendment.

Title 16
California Code of Regulations
AMEND: 3394.6

Filed 08/15/01
Effective 08/15/01
Agency Contact: James Allen (916) 255-4300

**CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD**
Transfer/Processing of Putrescible Wastes

This emergency rulemaking action amends the qualifying test for determining if a transfer and processing operation or facility is subject to the Board's regulations.

Title 14
California Code of Regulations
ADOPT: 17402.5 (c)(6)&17402.5(d)(3) AMEND:
17400,17402,and 17402.5
Filed 08/13/01
Effective 02/13/02
Agency Contact: Elliot Block (916) 255-2821

**CALIFORNIA POLLUTION CONTROL
FINANCING AUTHORITY**
California Recycle Underutilized Sites Program

This emergency action implements the California Recycle Underutilized Sites [Cal ReUSE] loan program intended to encourage the clean up of contaminated urban and rural brownfield sites.

Title 4
California Code of Regulations
ADOPT: 8090, 8091, 8092, 8093, 8094, 8095,
8096, 8097, 8098, 8099, 8100, 8101
Filed 08/13/01
Effective 08/13/01
Agency Contact: Sherri K. Wahl (916) 654-5951

CALIFORNIA STUDENT AID COMMISSION
Cal Grant Awards

This certificate of compliance filing complies with Chapter 403, Statutes of 2000, in establishing requirements for applicants to obtain Cal Grant awards. The new legislation set a deadline of March 2, 2001, for the first filing of applications and grade point averages to be eligible for the three new Cal Grant Entitlement Award programs for California senior high school students pursuing a postsecondary education, or the revised Cal Grant Competitive Award program for these students as well as existing postsecondary students.

Title 5
California Code of Regulations
ADOPT: 30007, 30008, 30009, 30023, 30024,
30025, 30026, 30027
Filed 08/13/01
Effective 08/13/01
Agency Contact: John R. Peirce (916) 526-8918

DEPARTMENT OF HEALTH SERVICES
Drinking Water System Classification & Operator Certification

This certificate of compliance action (R-40-00E) repeals old drinking water treatment plant and operator certification system regulations. It adopts new treatment plant and distribution system classifications and expanded operator certification, consistent with the California Clean Water Safety Act and federal guidelines.

Title 17, 22
California Code of Regulations
ADOPT: 63750.10, 63750.15, 63750.20, 63750.25,
63750.30, 63750.35, 63750.40, 63750.45,
63750.50, 63750.55, 63750.60, 63750.65,
63750.70, 63750.75, 63750.80, 63765, 63770,
63775, 63780, 63785, 63790, 63795, 63800, 63805,
63810, 63815, 63820, 63825, 63830,
Filed 08/13/01
Effective 08/13/01
Agency Contact:
Charles E. Smith (916) 657-0730

DEPARTMENT OF HEALTH SERVICES
Drug Medi-Cal Rates. FY 2000-01

This Certificate of Compliance updates the Medi-Cal reimbursement rates for substance abuse (Drug Medi-Cal) services for FY 2000-2001.

Title 22
California Code of Regulations
AMEND: 51516.1
Filed 08/15/01
Effective 08/15/01
Agency Contact: Sandra Ortega (916) 657-3174

DEPARTMENT OF SOCIAL SERVICES
Recipient Claim Establishment and Collections

This emergency regulatory action implements changes made by the USDA to the Food Stamp Program that are required to be in place by August 1, 2001.

Title MPP
California Code of Regulations
ADOPT: 63-016 AMEND: 63-102, 63-300, 63-504,
63-801, 63-802, 63-804
Filed 08/10/01
Effective 08/10/01
Agency Contact:
Anthony J. Velasquez (916) 657-2586

EMPLOYMENT DEVELOPMENT DEPARTMENT
Conflict of Interest Code

The Employment Development Department is amending its conflict of interest code found at the captioned citation. The Fair Political Practices Commission approved the changes for filing on June 22, 2001.

Title 22
California Code of Regulations
AMEND: 311-1
Filed 08/09/01
Effective 09/08/01
Agency Contact: Laura Colozzi (916) 654-7712

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Permissible Exposure Limit for Carbon Monoxide

The California Occupational Safety and Health Standards Board is amending the captioned section, Appendix E, entitled "Sewer System Entry," in order to correct the 8-hour time weighted average PEL for carbon monoxide from the figure of 35 ppm to 25 ppm. This correction was necessary due to a change in the ceiling limit which took place in File No. 95-0224-03S which changed the same PEL.

Title 8
California Code of Regulations
AMEND: 5157
Filed 08/10/01
Effective 08/10/01
Agency Contact: Marley Hart (916) 274-5721

**STATE ALLOCATION BOARD
Hardship Funding**

The proposed regulatory action amends regulations implementing the Leroy F. Greene School Facilities Act of 1998 by permitting districts more flexibility in use of new construction grants for excess pupils or different grade levels, allowing districts to opt for partial project funding while maintaining priority for the unfunded project balance on the SAB's unfunded list, and revises Form SAB 50-04, "Application for Funding".

Title 2
California Code of Regulations
AMEND: 1859.77.2, 1859.94, 1859.95, 1859.2, 1859.21, 1859.50, 1859.70, 1859.73.1, 1859.73.2, 1859.74.1, 1859.75.1, 1859.76, 1859.78.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.100, 1859.101, 1859.102, 1859.107, Form SAB 50-04
Filed 08/13/01
Effective 08/13/01
Agency Contact: Lisa Jones (916) 322-1043

**YOUTHFUL OFFENDER PAROLE BOARD
Board Hearing Procedures**

This rulemaking amends the Board's rules of construction and definitions, rules for hearings, and offense categories and classifications.

Title 15
California Code of Regulations
AMEND: 4900, 4944(a)(b), 4952

Filed 08/15/01
Effective 09/14/01
Agency Contact: Connie Erlich (916) 322-9800

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN APRIL 11, 2001
TO AUGUST 15, 2001**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

06/20/01 ADOPT: 125.5 AMEND: 121, 122, 123, 124, 125, 126, 127, 128

Title 2

08/02/01 AMEND: 554, 554.3, 554.4, 554.6, 554.7, 554.8, 554.9, 554.10

07/25/01 ADOPT: 1859.22, 1859.73.2, 1859.74.3
AMEND: 1859.2, 1859.21, 1859.50, 1859.70, 1859.73.1, 1859.74.1, 1859.75.1, 1859.76, 1859.78.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.100, 1859.101, 1859.102, 1859.107

07/19/01 ADOPT: Ch. 95, section 58400

07/17/01 ADOPT: 18536

07/12/01 REPEAL: 18416

07/10/01 REPEAL: 18215.2

06/27/01 ADOPT: 549.80

06/26/01 AMEND: 18406, 18427.1, 18723, 18960

06/25/01 ADOPT: 18539, 18539.2, 18550

06/19/01 ADOPT: 18421.4, 18542

06/13/01 AMEND: 1859.2, 1859.20, 1859.21, 1859.30, 1859.33, 1859.40, 1859.42, 1859.43, 1859.50, 1859.51, 1859.60, 1859.70, 1859.71.1, 1859.72, 1859.73.1, 1859.74.1, 1859.75.1, 1859.76, 1859.78.2, 1859.78.3, 1859.79.1, 1859.79.3, 1859.81, 1859.81.1, 1859.82

06/12/01 ADOPT: 1139

05/29/01 ADOPT: 2980, 2980.1, 2980.2, 2980.3, 2980.4, 2980.5, 2980.6, 2980.7, 2980.8, 2980.9

05/04/01 AMEND: 18523, 18523.1, 18531, 18533, 18537 REPEAL: 18519.4, 18530.1, 18530.7, 18531.1, 18531.3, 18531.4, 18531.5, 18532, 18535, 18539, 18541, 18550, 18262

05/01/01 ADOPT: 2980, 2980.1, 2980.2, 2980.3,
2980.4, 2980.5, 2980.6, 2980.7, 2980.8,
2980.9
05/01/01 ADOPT: 18503 REPEAL: 18502,
18502.1
04/30/01 AMEND: 1896.300, 1896.310, 1896.320,
1896.330, 1896.340, 1896.350, 1896.360,
1896.370
04/24/01 AMEND: Ch. 9, sec. 30000

Title 3

08/07/01 AMEND: 3423(b)
07/24/01 AMEND: 6400
07/24/01 AMEND: 3591.2
07/11/01 ADOPT: 3650, 3651, 3652, 3654, 3655,
3656, 3657, 3658, 3659, 3660
07/06/01 ADOPT: 3661, 3662, 3663 AMEND:
3652
07/02/01 AMEND: 3430(b)
06/27/01 AMEND: 6450.2, 6450.3
06/20/01 AMEND: 6100, 6102, 6110, 6116, 6118,
6122, 6130, 6140, 6141, 6152, 6153,
6154, 6156, 6157, 6158, 6159, 6160,
6171, 6176, 6177, 6178, 6179, 6181,
6182, 6184, 6185, 6187, 6188, 6189,
6191, 6192, 6197.5, 6200, 6206, 6210,
6215, 6222, 6223, 6225, 6226, 6240
06/15/01 ADOPT: 1301, 1301.1, 1301.2, 1301.4,
1301.5, 1301.6, 1301.7, 1301.8, 1301.9
05/22/01 ADOPT: 3700
05/04/01 AMEND: 1359, 1392.4, 1436.30 RE-
PEAL: 1359.1, 1360, 1361, 1362, 1363

Title 4

08/13/01 ADOPT: 8090, 8091, 8092, 8093, 8094,
8095, 8096, 8097, 8098, 8099, 8100,
8101
07/26/01 AMEND: 8034, 8070, 8072 REPEAL:
8079
05/22/01 AMEND: 2000
04/11/01 ADOPT: 7000, 7001, 7002, 7003, 7004,
7005, 7006, 7007, 7008, 7009, 7010,
7011, 7012, 7013, 7014, 7015, 7016, 7017

Title 5

08/13/01 ADOPT: 30007, 30008, 30009, 30023,
30024, 30025, 30026, 30027
08/02/01 AMEND: 1032
08/01/01 AMEND: 700, 701, 702, 704
08/01/01 AMEND: 18600
07/05/01 ADOPT: 30951.1, 30959 AMEND:
30950, 30951, 30952, 30953, 30954,
30955, 30956, 30958
06/28/01 ADOPT: 18400, 18405, 18406, 18407,
18408, 18409, 18409.5 18410, 18411,
18412, 18413, 18414, 18415, 18416,
18417, 18418, 18419, 18420, 18421,
18422, 18423, 18424, 18425, 18426,

18427, 18428, 19489, 18430, 18431,
18432, 18433, 18434
06/20/01 ADOPT: 1200, 1203, 1204, 1205, 1206,
1207, 1208, 1209, 1210, 1211, 1212,
1215, 1216, 1217, 1218, 1220, 1225
06/15/01 AMEND: 80026, 80027
06/13/01 ADOPT: 4914, 4915, 4915, 4916, 4917,
4925, 4926, 4927, 4963, 4964, 4965
AMEND: 4900, 4901, 4902, 4910, 4911,
4912, 4913, 4920, 4921, 4922, 4930,
4931, 4940, 4960
06/11/01 ADOPT: 1031, 1032, 1032(i), 1033,
1034, 1035, 1036, 1037, 1038, 1039
06/05/01 AMEND: 18302
05/15/01 ADOPT: 30007, 30008, 30009, 30023,
3024, 30025, 30026, 30027
05/09/01 AMEND: 850, 852, 853, 855, 857, 858,
859, 862, 864.5, 866, 867, 867.5, 868,
870, 880, 884, 891, 894
04/30/01 AMEND: Section 30060
04/25/01 ADOPT: 80016

Title 8

08/10/01 AMEND: 5157
08/03/01 AMEND: 5193
08/01/01 AMEND: 15251(a)1
07/25/01 AMEND: 1710, 4999
07/18/01 AMEND: 10169
07/12/01 AMEND: 43, 44, 45, 46, 47, 70, 71, 72,
73, 74, 75, 76, 76.5, 77
07/02/01 AMEND: 1714, 1715
06/25/01 AMEND: 1662(j)
06/19/01 AMEND: 1504, 3622
06/13/01 AMEND: 5189(n)
06/13/01 ADOPT: 34050, 34055, 34060, 34065,
51720 AMEND: 32001, 32050, 32155,
32700, 32720, 32721, 32990, 32991,
34020, 34030, 34040, 40178, 40400,
40410, 40420, 51700, 51710, 51730
REPEAL: 34000, 34010
06/11/01 ADOPT: 32015, 32016, 32325, 32603,
32604, 60000, 60010, 60020, 60030,
60035, 60040, 60050, 60060, 60070,
61000, 61005, 61010, 61020, 61030,
61040, 61050, 61055, 61060, 61065,
61070, 61072, 61075, 61080, 61090,
61100, 61105, 61110, 61115, 61120,
61125
06/11/01 AMEND: 5209(d)(2)(B)(C)(D)
05/30/01 AMEND: 9790.1, 9792.1
05/30/01 ADOPT: 10124.1
05/23/01 AMEND: 9714, 9714.5
05/10/01 REPEAL: 15402.1(4)
05/07/01 AMEND: 4188(b)
05/07/01 ADOPT: 15251(b)(1)(B) AMEND:
15251(b)(2), 15251(c)(2)(A),
15251(b)(6)

05/02/01 ADOPT: 11.5, 118, 119 AMEND: 1
 04/25/01 AMEND: 5157, 5158, 8355
 04/19/01 AMEND: 15230

Title 9

06/28/01 AMEND: 7050, 7051, 7053, 7054, 7056, 7057
 05/17/01 AMEND: 7263, 7264.2, 7264.6
 04/25/01 ADOPT: 9500, 9510, 9517, 9530, 9533
 AMEND: 9505, 9515, 9520, 9525, 9535, 9540, 9545

Title 10

08/07/01 ADOPT: 5354.1 AMEND: 5350, 5354, 5355, 5356
 07/30/01 ADOPT: 260.402
 07/20/01 ADOPT: 5359, 5359.1, 5359.2, 5359.3, 5359.4, 5359.5, 5359.6, 5359.7,
 07/05/01 ADOPT: 1741.6
 06/19/01 ADOPT: 2498.6
 06/13/01 ADOPT: 2187.3 AMEND: 2186.1, 2187.1, 2187.2, 2188, 2188.2, 2188.3, 2188.2, 2188.5, 2188.6, 2188.8, and 2188.9
 06/11/01 ADOPT: 4081, 4081.1, 4081.2, 4081.3, 4081.4, 4081.5, 4081.6, 4081.7, 4081.8
 06/04/01 AMEND: 310.001
 06/01/01 ADOPT: 2695.30
 05/24/01 ADOPT: 260.105.40, 260.204.10, 260.204.11
 05/23/01 AMEND: 2699.100
 05/16/01 AMEND: 2716, 2790.1, 2805.1
 05/11/01 ADOPT: 2278, 2278.2, 2278.3, 2278.4, 2278.5
 05/02/01 ADOPT: 260.102.19, 260.140.41, 260.140.42, 260.140.45, 260.140.46
 04/30/01 ADOPT: 2130, 2130.1, 2130.2, 2130.3, 2130.4, 2130.5, 2130.6, 2130.7, 2130.8

Title 11

08/02/01 AMEND: 1005(c)
 07/17/01 AMEND: 1007
 07/17/01 ADOPT: 1070, 1071, 1082 AMEND: 1001, 1052, 1053, 1055
 07/12/01 AMEND: 1019
 06/05/01 AMEND: 1081(a)(2)
 06/01/01 ADOPT: 410, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426
 06/01/01 ADOPT: 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008
 05/22/01 AMEND: 1005
 05/18/01 ADOPT: 977.10, 977.15, 977.20, 977.30, 977.31, 977.32, 977.33, 977.34, 977.35, 977.36, 977.40, 977.41, 977.42, 977.43, 977.44, 977.45, 977.46, 977.47, 977.48, 977.49, 977.50, 977.51, 977.55, 977.60, 977.70, 977.71, 977.80, 977.90

04/20/01 ADOPT: 999.5 AMEND: 999.2(f) RE-PEAL: 999.2(e), 999.5
 04/11/01 AMEND: 1015(e)

Title 13

07/25/01 AMEND: 110.04, 115.01
 07/25/01 ADOPT: 2065 AMEND: 1956.8
 07/03/01 ADOPT: 1231.5, 1234.5, 1270.3
 AMEND: 1256, 1270
 06/26/01 ADOPT: 80.00, 80.25 AMEND: 80.50, 80.55, 80.60, 80.65, 80.70, 80.75, 80.90
 06/22/01 ADOPT: 125.00, 125.06, 125.12, 125.16, 125.18, 125.20, 125.22,
 AMEND: 100.91, 100.93, 100.92, 100.94, 1000.95
 06/13/01 AMEND: 350.02, 350.03, 350.04, 350.06, 350.16, 350.20, 350.22, 350.24, 350.28, 350.34, 350.36, 350.38, 350.40, 350.44, 350.46, 350.48, 350.50
 06/04/01 AMEND: 1956.1, 1956.2, 1956.4
 05/24/01 AMEND: 20.04
 05/24/01 AMEND: 1130
 05/22/01 ADOPT: 55.01, 55.02, 55.03, 55.04, 55.05, 55.06
 05/14/01 AMEND: 268.04, 314.00
 04/30/01 AMEND: 1956.6, 1961

Title 14

08/13/01 ADOPT: 17402.5(c)(6)& 17402.5(d)(3)
 AMEND: 17400, 17402, 17402.5
 08/01/01 AMEND: 27.85
 07/24/01 AMEND: 311, 354
 07/16/01 ADOPT: 851.27.1 AMEND: 851.20, 851.21, 851.22, 851.24, 851.25, 851.26, 851.27
 07/10/01 AMEND: 2085, 2090, 2405, 2420, 2425, 2430, 2500, 2505, 2800, 2805
 07/02/01 ADOPT: 5104, 5170, 5171, 5172, 5173, 5174, 5175, 5176 AMEND: 5100, 5102, 5103, 5105, 5106, 5107
 06/28/01 ADOPT: 10720, 10721, 10726, 10727, 10728, 10729
 06/26/01 AMEND: 18755(g), 18757(e), 18776e, 18794(h)(1), 18794.1(c)(1), 18800(d), 18801(a)(4), 18813(c)
 06/18/01 ADOPT: 150.03
 06/18/01 AMEND: 14ccr 1038 by adopting subsection(g)
 06/18/01 ADOPT: 8.20 AMEND: 5.86
 06/11/01 AMEND: 2200
 05/25/01 AMEND: 817.02, 818.02
 05/21/01 AMEND: 360, 361, 362, 363, 364, 401
 05/17/01 ADOPT: 17367, 17368, 17369, 17370.1, 17370.2, 18225
 05/14/01 AMEND: 11900
 05/14/01 ADOPT: 14020
 05/09/01 AMEND: 182
 05/08/01 ADOPT: 20030, 20040, 20050, 20060, 20070, 20080, 20090, 20100, 20110

04/30/01 AMEND: 2.02, 7.50	1399.137, 1399.138, 1399.139, 1399.140,
04/26/01 ADOPT: 749..1	1399.141, 1399.142, 1399.144 REPEAL:
04/26/01 AMEND: 228, 757	1399.104
04/24/01 AMEND: 238.6	06/07/01 AMEND: 1399.511, 1399.556
04/23/01 AMEND: 27.80	06/07/01 AMEND: 2649
04/16/01 AMEND: 791, 791.7, Form FG OSPR-1972 (12/00)	06/06/01 AMEND: 1444
04/12/01 ADOPT: 18304.1, 18304.2, 18304.3, 18304.4 AMEND: 18011, 18080, 18081, 18082, 18083, 18084, 18301, 18302, 18303, 18304, 18304.5, 18306, 18307, 18350, 18351, REPEAL: 18305, 18309, 18310, 18311, 18312, 18313, 18353, 18354, 18355	05/17/01 ADOPT: 2616, 2624
04/11/01 ADOPT: 18570, 18571, 18572, 18573, 18574, 18575, 18576, 18577, 18578, 18579, 18580	05/16/01 ADOPT: 980.1 AMEND: 974
	05/10/01 AMEND: 901
	05/03/01 AMEND: 5.1, 70, 93, 98
	04/25/01 REPEAL: 1533.1
	04/25/01 AMEND: 1575
	04/19/01 AMEND: 331.13
	04/17/01 AMEND: 331.12.2, 331.12.3, 331.13
	04/17/01 AMEND: 2655 REPEAL: 2611
	04/16/01 AMEND: 2000, 2200, 2305, 2310, 2320, 2401, 2501, 2645, 2685, 2745

Title 15

08/15/01 AMEND: 4900, 4944(a)(b), 4952
 08/06/01 AMEND: 3135, 3230, 3338
 07/30/01 AMEND: 3338
 07/25/01 ADOPT: 4945.5 AMEND: 4927, 4963, 4978, 4995
 07/03/01 AMEND: 3369.5
 06/28/01 AMEND: 2513(e), 2616(a)(8), 2646(c)(3)
 06/19/01 AMEND: 4622
 05/29/01 AMEND: 179
 05/21/01 AMEND: 2512(a)(5)(b)
 05/11/01 ADOPT: 3605
 05/09/01 AMEND: 4900
 05/08/01 AMEND: 2601(b), 2605(c), 2637(b)(6), 2647.1(b)
 05/03/01 ADOPT: 3377.2 AMEND: 3000, 3377.1

Title 16

08/15/01 AMEND: 3394.6
 08/13/01 AMEND: 1388(f)
 08/01/01 AMEND: 1717.3
 07/20/01 AMEND: 310.2
 07/19/01 AMEND: 367.9(b)(2)
 07/12/01 AMEND: 1807
 07/11/01 AMEND: 1381.4, 1388
 07/10/01 AMEND: 1399.710
 07/06/01 ADOPT: 1397.71
 07/05/01 AMEND: 1533
 07/03/01 AMEND: 1399.696
 07/02/01 ADOPT: 355.2
 06/22/01 ADOPT: 1775.15 AMEND: 1775, 1775.2 REPEAL: 1775.1
 06/20/01 AMEND: 1399.417, 1399.419, 1399.443, 1399.444 REPEAL: 1399.445
 06/11/01 AMEND: 1399.101, 1399.102, 1399.105, 1399.113, 1399.114, 1399.115, 1399.116, 1399.118, 1399.120, 1399.121, 1399.131, 1399.133, 1399.134, 1399.135, 1399.136,

Title 17

07/19/01 ADOPT: 33001, 33002, 33003, 33004, 30005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, 33013, 33014, 33015, 33025 AMEND: 33020, 33030, 33040 REPEAL: 33001, 33010
 07/17/01 AMEND: 95001, 95002, 95005
 07/16/01 AMEND: 93106
 07/12/01 AMEND: 57310, 57332, 57530
 06/27/01 ADOPT: 54327.2 AMEND: 54302, 54327, 54327.1, 58651
 06/18/01 ADOPT: 94700, 94701 AMEND: 94521, 94522, 94523, 94524, 94526
 06/06/01 AMEND: 94502, 94504
 06/04/01 ADOPT: 37000,37020,37025,37100
 05/31/01 AMEND: 94011
 05/30/01 AMEND: 90705
 05/30/01 AMEND: 60201
 05/03/01 AMEND: 54319, 54342, 57332
 05/02/01 ADOPT: 56031, 56033, 56034, 56034.1, 56035, 56931, 56932, 56933, 56934, 56936, 56937 AMEND: 56002, 56037, 56038, 56048, 56054, 56057, 56059, 56060
 04/18/01 AMEND: 94508, 94509, 94512, 94513

Title 17, 22

08/13/01 ADOPT: 63750.10, 63750.15, 63750.20, 63750.25, 63750.30, 63750.35, 63750.40, 63750.45, 63750.50, 63750.55, 63750.60, 63750.65, 63750.70, 63750.75, 63750.80, 63765, 63770, 63775, 63780, 63785, 63790, 63795, 63800, 63805, 63810, 63815, 63820, 63825, 63830
 05/14/01 AMEND: 1029.6, 1029.170, 51529(g)
 04/25/01 ADOPT: 63750.10, 63750.15, 63750.20, 63750.25, 63750.30, 63750.35, 63750.40, 63750.45, 63750.50, 63750.55, 63750.60,

63750.65, 63750.70, 63750.75, 63750.85,
63765, 63770, 63775, 63780, 63785,
63790, 63795, 63800, 63805, 63810,
63815, 63820, 63825, 63830

Title 18

08/08/01 AMEND: 1699
08/01/01 AMEND: 1684
06/11/01 AMEND: 5021, 5022, 5031, 5032, 5033,
5034, 5035, 5036, 5041, 5042, 5070,
5072, 5073, 5074, 5074.5, 5075, 5076,
5077, 5078, 5080, 5082, 5083, 5085,
5087, 5092
06/07/01 AMEND: 469
06/06/01 AMEND: 5020, 5023, 5030, 5043, 5051,
5053, 5063, 5071, 5075.1, 5076.1, 5079,
5081, 5081.2, 5090, 5091, 5094, 5095
06/06/01 AMEND: 1620
06/06/01 AMEND: 1668
06/06/01 ADOPT: 2240, 2241, 2242, 2250, 2255
06/06/01 AMEND: 473
06/06/01 AMEND: 468
06/05/01 AMEND: 1525.2
05/23/01 AMEND: 1705
05/02/01 AMEND: 1503

Title 20

07/09/01 AMEND: Rule 17.1(d)(2)
04/25/01 ADOPT: 2021, 2022, 2023, 2024, 2025,
2026, 2027, 2028, 2029, 2030, 2031

Title 21

05/16/01 ADOPT: 1386, 1387, 1388, 1389, 1390,
1391, 1392, 1393, 1394, 1395, 1396,
1397, 1398, 1399, 1400

Title 22

08/15/01 AMEND: 51516.1
08/09/01 AMEND: 311-1
08/03/01 ADOPT: 66273.6, 66273.80, 66273.81,
66273.82, 66273.83, 66273.84, 66273.85,
66273.86, 66273.87, 66273.88, 66273.89,
66273.90 AMEND: 66261.9, 66273.1,
66273.8, 66273.9
07/06/01 ADOPT: 68200, 68201, 68202, 68203,
68204, 68205, 68206, 68207, 68208,
68209, 68210, 68211, 68212, 68213
06/26/01 ADOPT: 66261.9, 66273.1, 66273.2,
66273.4, 6273.5, 66273.8, 66273.9,
66273.10, 66273.11, 66273.12, 66273.13,
66273.14, 66273.15, 66273.16, 66273.17,
66273.18, 66273.19, 66273.20, 66273.30,
66273.31, 66273.32, 66273.33, 66273.34,
66273.35, 66273.36
06/25/01 ADOPT: 68300, 68301, 68302, 68303,
68304, 68305, 68306, 68307, 68308,
68309
06/20/01 ADOPT: 4400(hh), 4400(ii) AMEND:
4400(ee), 4409, 4420

06/14/01 ADOPT: 100901, 100902, 100903,
100904, 100904.5 AMEND: 100900

06/11/01 AMEND: 12000

05/30/01 AMEND: 58010, 58050, 58059, 58065

05/15/01 AMEND: 64423.1, 64432.1, 64451,
64819

05/14/01 ADOPT: 66270.67

05/09/01 AMEND: 12705

04/30/01 AMEND: 64450 REPEAL: 64450.1

04/26/01 ADOPT: 64400.42, 64400.44, 64480,
64482, 64483 REPEAL: 64463.1

04/19/01 AMEND: 51510, 51510.1, 51510.2,
51510.3, 51511, 51511.3, 51511.5,
51511.6, 51523, 51532.1, 51535,
51535.1, 51544, 54501

04/16/01 ADOPT: 100059.2 AMEND: 100059.1,
100064

Title 22, MPP

07/27/01 ADOPT: 80055.1, 87054, 87055.1,
87855.1, 88046, 101198.1, 102395,
102402.1 AMEND: 80054, 87454,
87854, 101195

06/29/01 AMEND: 80018, 80027, 80029, 80034,
80036, 83017, 87001, 87017, 87027,
87029, 87034, 87036, 87044, 87045,
87101, 87218, 87224, 87230, 87235,
87340, 87834, 89019, 89043 REPEAL:
80032, 80033, 80041, 83032, 87032,
87033, 87041, 87233, 87234

06/26/01 ADOPT: 111000, 110042, 110046,
110088, 110099, 110109, 110129,
110135, 110147, 110148, 110150,
110164, 110182, 110184, 110186,
110194, 110200, 110220, 110224,
110230, 110252, 110261, 110289,
110341, 110410, 110431, 110436,
110445, 110456, 110474, 110478,

05/23/01 AMEND: 87564.3, 87730

04/30/01 AMEND: 84001

Title 23

07/26/01 ADOPT: 3870, 3871, 3872, 3873, 3874,
3875, 3876, 3877, 3878, 3879, 3880

07/09/01 ADOPT: 3004

06/28/01 AMEND: 3976

05/30/01 ADOPT: 2729, 2729.1

05/14/01 AMEND: 3934

05/14/01 ADOPT: 2636.1, 2636.2, 2636.3, 2636.4,
2637, 2644.1 AMEND: 2611, 2630, 2631,
2635, 2636, 2640, 2641, 2660, 2666

Title 25

07/17/01 AMEND: 8211

05/31/01 AMEND: 6932

05/11/01 AMEND: 8000, 8002, 8004, 8006, 8008, 8010, 8012, 8014, 8020, 8022, 8024, 8026, 8028, 8030, 8032 REPEAL: 8018

Title 27

07/11/01 AMEND: 15250, 15290

06/25/01 AMEND: 15240

Title 28

06/26/01 ADOPT: 1300.68.2 AMEND: 1300.67

04/16/01 ADOPT: 1300.67.24

Title MPP

08/10/01 ADOPT: 63-016 AMEND: 63-102, 63-300, 63-504, 63-801, 63-802, 63-804

06/25/01 AMEND: 44-314, 82-518

05/31/01 AMEND: 44-211.63, 44-211.64

05/24/01 AMEND: 63-102, 63-300, 63-301, 63-402, 63-405, 63-501, 63-502, 63-503, 63-504, 63-507

05/07/01 AMEND: 42-205, 43-119, 44-133 REPEAL: 44-353

04/26/01 ADOPT: 49-101, 49-105, 49-110, 49-115, 49-120, 49-125

04/17/01 AMEND: 23-601, 604, 610, 613, 616, 620, 621, 622, 624, 625, 630, 640, 650

**OAL REGULATORY
DETERMINATIONS**

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
2001 OAL Determination No. 7
August 15, 2001**

Requested by:

ROBERT COLLINS

Concerning:

DEPARTMENT OF CORRECTIONS—Memorandum on
“Inmate Participation in Contests” Issued by the
Warden of Folsom State Prison

**Determination issued pursuant to Government
Code Section 11340.5; California Code of Regula-
tions, Title 1, Section 121 et seq.**

ISSUE

Do the rules contained in the Department of Corrections’ memorandum on “Inmate Participation in Contests” issued by the warden of Folsom State Prison constitute “regulations” as defined in Govern-

ment Code section 11342.600 which are required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act? ¹

CONCLUSION

With one exception, the rules contained in the Department of Corrections’ memorandum on “Inmate Participation in Contests” issued by the warden of Folsom State Prison are *not* “regulations” which are required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (“APA”) because the rules either merely quote or reiterate existing, properly adopted regulations or are exempt from the APA under the Department of Corrections “local rules” exemption. The rule in the memorandum that repeats a rule in the Department’s Operations Manual—setting forth the particular process to be employed by a prison for handling incoming inmate mail containing instruments used in a “game of chance”—constitutes a “regulation” which is required to be adopted under the APA.

BACKGROUND

Robert Collins was an inmate at Folsom State Prison at the time he submitted his request for determination to the Office of Administrative Law (“OAL”). Mr. Collins received a “Notice of Special Disposition—Inmate Mail” from the Folsom State Prison Mail Room that returned a letter to him for being “. . . in violation of 3009 gambling” The notice did not identify what mail was being returned, but Mr. Collins indicates that it was his entry for the “Pro-Pick’em” contest ² sponsored by the West County Times of Pinole, California.

As part of his request for determination, Mr. Collins included a copy of a memorandum dated November 22, 1999, which is captioned “Inmate Participation in Contests,” (the “Memorandum”). This Memorandum was signed by G. A. Mueller, Warden of Folsom State Prison, and issued to all staff and inmates at Folsom State Prison. The Memorandum sets forth a number of

¹ This request for determination was filed by Robert Collins, J-44263 (4/N-15), San Quentin State Prison, San Quentin, CA 94974. Mr. Collins’ former address was at Folsom State Prison. The Department of Corrections’ response was filed by E. A. Mitchell, Interim Assistant Director, Office of Correctional Planning, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001. This request was given a file number of 99-027. This determination may be cited as “**2001 OAL Determination No. 7.**”

² According to the “Pro-Pick’em” advertisement submitted by Mr. Collins, “Pro-Pick’em” awards are given to people for their ability to pick the winners of each week’s professional football games, with the winning prize being \$100 per week.

rules pertaining to inmate gambling and bookmaking, inmate participation in media contests, and the handling of incoming inmate mail where the mail contains instruments used in a “game of chance” (such as state lottery tickets, sweepstakes tickets, etc.). It is this Memorandum issued by the warden of Folsom State Prison that is the subject of this OAL determination.³

ANALYSIS

The challenged Memorandum states as follows:

“It has come to my attention that in the past inmates have participated in Media Sponsored contests that offer prizes. The following is a reiteration and clarification of Departmental and Institutional policies.

1. California Code of Regulations, Division 3, Chapter 1, Article 1, Section 3009, Gambling: *‘Inmates may not participate in any form of gambling or bookmaking.’*
2. California Code of Regulations, Division 3, Subchapter 2, Article 4, Section 3138(g), Contests: *‘Inmates may not participate in any contest advertised in or sponsored by the media when a financial obligation is involved, or when such participation will result in an expense to the facility beyond the routine cost of processing mail. Exceptions may be individually approved by the warden.’* (Financial Obligation includes both parties, participant and contest sponsor.)
3. California Department of Corrections Operations Manual (DOM), Volume 5, Chapter 50000 Custody/Security Operations, Subchapter 54000 Services, Section 54010, Mail:

54010.17 Contests

Inmates shall not participate in any contest advertised or sponsored by the media when a

financial obligation is involved or when such participation will result in an expense to the facility beyond cost of processing mail.

If lottery tickets, etc., are discovered in incoming inmate mail the entire envelope and contents shall be returned to sender with a preprinted notice to the sender which states:

‘Inmates are not permitted to receive or possess any instrument used in a game of chance (i.e., state lottery tickets, sweepstakes tickets, etc.). Please remove the unauthorized item(s) from this envelope and feel free to send the letter to the addressee.

Thank you for your cooperation.

Mail Room Staff
Folsom State Prison’

(Game of Chance: Any contest where ‘probability’ is an integral component, i.e., Pro-Pick Em’ [sic], Pick Fours, Sports Picks, etc.)

Departmental and institution policy clearly prohibits inmate participation in any advertised or media sponsored contest involving the possibility of winning prizes of a monetary value. [Emphasis in original.]”

A determination of whether the rules contained in the Memorandum are “regulations” subject to the APA (Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2, Government Code) depends on (1) whether the APA is generally applicable to the quasi-legislative enactments of the Department of Corrections (“Department”), (2) whether the challenged rules are “regulations” within the meaning of Government Code section 11342.600, and (3) whether the challenged rules fall within any recognized exemption from APA requirements.

- (1) As a general matter, all state agencies in the executive branch of government and not expressly exempted are required to comply with the rulemaking provisions of the APA when engaged in quasi-legislative activities. (*Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 126–128, 174 Cal.Rptr. 744, 746–747; Gov. Code, secs. 11342.520 and 11346.) Moreover, the term “state agency” includes, for purposes applicable to the APA, “every state office, officer, department, division, bureau, board, and commission.” (Gov. Code, sec. 11000.)

Penal Code section 5054 provides that:

“The supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the director [of the Department of Corrections].”

³ Additionally, Mr. Collins submitted a page that did not identify its source. It was captioned “Subject: Inmates are Not Allowed to Participate in the Pro-Pick’em Football Contest.” Because this page essentially repeats a number of the same rules contained in the Memorandum (and does not go beyond the scope of the Memorandum), we do not address this page separately. We further note that in his request for determination Mr. Collins raised legal issues which go beyond the question of whether the Department of Corrections’ rules constitute “regulations” which are required to be adopted under the APA (such as whether the warden of Folsom State Prison misinterpreted CCR, Title 15, section 3138, subdivision (g), and whether “certain parties here at Folsom are attempting to re-write the D.O.M. and Title 15 without proper authority”). In connection with a request for determination, OAL is limited to making those determinations and findings set forth in Government Code section 11340.5, subdivision (b), and CCR, Title 1, section 121.

The Department is in neither the judicial nor legislative branch of state government, and therefore, unless expressly exempted therefrom, the APA rule-making requirements generally apply to the Department.

In this connection, Penal Code section 5058, subdivision (a), states in part as follows:

“The director [of the Department of Corrections] may prescribe and amend rules and regulations for the administration of the prisons The rules and regulations shall be promulgated and filed pursuant to [the APA] [Emphasis added.]”

Thus, the APA rulemaking requirements generally apply to the Department. (See *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 942, 107 Cal.Rptr. 596, 603 (agency created by Legislature is subject to and must comply with APA).)

(2) Government Code section 11340.5, subdivision (a), prohibits state agencies from issuing rules without complying with the APA. It states as follows:

“(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [‘] regulation[‘] as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]”

Government Code section 11342.600, defines “regulation” as follows:

“. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. [Emphasis added.]”

According to *Engelmann v. State Board of Education* (1991) 2 Cal.App.4th 47, 62, 3 Cal.Rptr.2d 264, 274–275, agencies need not adopt as regulations those rules contained in a “statutory scheme which the Legislature has [already] established” But “to the extent [that] any of the [agency rules] depart from, or embellish upon, express statutory authorization and language, the [agency] will need to promulgate regulations”

Similarly, agency rules properly adopted as regulations (i.e., California Code of Regulations (“CCR”) provisions) cannot legally be “embellished upon.” For example, *Union of American Physicians and*

Dentists v. Kizer (1990) 223 Cal.App.3d 490, 500, 272 Cal.Rptr. 886, 891 held that a terse 24-word definition of “intermediate physician service” in a Medi-Cal regulation could not legally be supplemented by a lengthy seven-paragraph passage in an administrative bulletin that went “far beyond” the text of the duly adopted regulation. Thus, statutes may legally be amended only through the legislative process; duly adopted regulations—generally speaking—may legally be amended only through the APA rulemaking process.

Under Government Code section 11342.600, a rule is a “regulation” for these purposes if (1) the challenged rule is either a rule or standard of general application or a modification or supplement to such a rule and (2) the challenged rule has been adopted by the agency to either implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure. (See *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251; ⁴ *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, 890.)

For an agency rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind, or order. (*Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323–324 (a standard of general application applies to all members of any open class).)

The challenged rules contained in the Memorandum apply, at a minimum, to all members of the open class of prisoners at Folsom State Prison. An “open class” is one whose membership could change, and the membership of the class of prisoners at Folsom State Prison could certainly change over time. Therefore, we find that the challenged rules contained in the Memorandum are standards of general application.

Next, we examine whether the specific rules contained in the Memorandum have been adopted by the Department to either implement, interpret, or make specific the law enforced or administered by the Department, or to govern the Department’s procedure.

First, several provisions contained in the Memorandum merely quote or reiterate existing Department regulations which have previously been adopted pursuant to the rulemaking provisions of the APA. The Memorandum quotes California Code of Regulations

⁴ OAL notes that a 1996 California Supreme Court case stated that it “disapproved” of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577, 59 Cal.Rptr.2d 186, 198. *Grier*, however, is still good law for these purposes.

(“CCR”), Title 15, section 3009, which reads as follows: “Inmates may not participate in any form of gambling or bookmaking.” The Memorandum also quotes from and reiterates CCR, Title 15, section 3138, subdivision (g), which reads: “Inmates may not participate in any contest advertised in or sponsored by the media when a financial obligation is involved, or when such participation will result in an expense to the facility beyond the routine cost of processing mail. Exceptions may be individually approved by the warden.” These provisions of the Memorandum, which merely quote from or reiterate existing, properly adopted regulations already in the CCR, do not further implement, interpret, or make specific the law enforced or administered by the Department or further establish rules that govern the Department’s procedure.

Second, after quoting from CCR, Title 15, section 3138, subdivision (g), the Memorandum sets forth the following added rule: “Financial Obligation includes both parties, participant and contest sponsor.” (Emphasis in original.) This added rule essentially defines the scope of the term “financial obligation” as used in section 3138, subdivision (g), thus further interpreting the existing regulation. Without this definition, subdivision (g) of section 3138 could be read to mean only a financial obligation that is incurred by the inmate (the contest participant). Furthermore, this rule implements, interprets, or makes specific Penal Code section 5054 and section 2601, subdivision (c)(1), which states in relevant part that “. . . Pursuant to this section, prison authorities may exclude any of the following matter (C) Any matter concerning gambling or a lottery.” Although this rule meets the basic definition of “regulation,” this rule is exempt from being a “regulation” under the “local rule” exemption, as discussed below.

Third, the Memorandum sets forth a rule (taken directly from section 54010.17 of the Department’s Operations Manual (DOM)) pertaining to the particular process for handling incoming inmate mail where the mail contains instruments used in a game of chance. This rule reads: “If lottery tickets, etc., are discovered in incoming inmate mail the entire envelope and contents shall be returned to sender with a preprinted notice to the sender which states: ‘Inmates are not permitted to receive or possess any instrument used in a game of chance (i.e., state lottery tickets, sweepstakes tickets, etc.). Please remove the unauthorized item(s) from this envelope and feel free to send the letter to the addressee’” (Emphasis in original.)

This rule, setting forth the particular process to be employed by the prison for handling incoming inmate mail containing instruments used in a game of chance, must be considered in the context of existing

Department regulations pertaining to the handling of inmate mail. CCR, Title 15, section 3006, subdivision (c), provides in relevant part that “Except as authorized by the institution head, inmates shall not possess or have under their control any matter which contains or concerns any of the following: . . . (13) Gambling or a lottery.” CCR, Title 15, section 3136 then provides in relevant part: “Staff shall not permit an inmate to send or receive mail which, in their judgment, has any of the characteristics listed in Section 3006(c) Disapproved incoming mail shall be disposed of in the manner set forth in subsection 3147(a)(5)(B).” The referenced section 3147 of Title 15 of the CCR is part of the very detailed scheme of Department regulations pertaining to the handling of inmate mail which is set forth in CCR, Title 15, sections 3130 through 3147. Subdivision (a)(5)(B) of section 3147 provides as follows:

“Incoming mail disallowed under the provisions of this article, under facility procedures, or pursuant to an appeal, shall be destroyed or mailed at the inmate’s expense to an approved outside correspondent. The undelivered mail shall be destroyed 15 days after notification of undelivered mail is forwarded to the inmate unless the inmate designates who is to receive the mail and authorizes withdrawal from their trust account to pay for the expense of mailing, or as authorized by the institution head, provides sufficient postage stamps already in the inmate’s possession.”

The provisions of CCR, Title 15, sections 3006, 3136 and 3147 discussed above would appear to provide that incoming inmate mail containing instruments used in a game of chance would *either be destroyed or mailed at the inmate’s expense to an approved outside correspondent designated by the inmate*. Instead, the rule in the Memorandum pertaining to the handling of incoming inmate mail containing instruments used in a game of chance provides that the entire envelope and contents of the incoming inmate mail shall be *returned to the sender with a specified preprinted notice*. The “inmate mail” rule in the Memorandum thereby further implements, interprets, or makes specific Penal Code section 2601, subdivision (c)(1), Penal Code section 5054, and CCR, Title 15, section 3006, subdivision (c), and CCR, Title 15, section 3136, by providing a process for handling incoming inmate mail which is specific to mail containing instruments used in a game of chance (a process which appears to differ from the regulations generally established for handling disallowed incoming inmate mail). Thus, this “inmate mail” rule meets the definition of “regulation.”

Fourth, the Memorandum contains the following definition of the term “Game of Chance”: “Game of

Chance: Any contest where ‘probability’ is an integral component, i.e., Pro-Pick Em’[sic], Pick Fours, Sports Picks, etc.” This definition further implements, interprets, or makes specific Penal Code section 2601, subdivision (c)(1), and Penal Code section 5054, providing that “Game of Chance” includes *any* contest where “*probability*” is an integral component and listing *specific examples* of games of chance (including Pro-Pick’em). Although this rule meets the basic definition of “regulation,” this rule is exempt from being a “regulation” under the “local rule” exemption, as discussed below.

Fifth, the Memorandum contains the following statement: “Departmental and institution policy clearly prohibits inmate participation in any advertised or media sponsored contest involving the possibility of winning prizes of a monetary value.” This statement further implements, interprets, or makes specific Penal Code section 2601, subdivision (c)(1), and Penal Code section 5054 by adding the criterium “involving the possibility of winning prizes of a monetary value” to the existing interpretation regarding media contests contained in CCR, Title 15, section 3138, subdivision (g), (thereby further interpreting the existing regulation). Although this provision meets the definition of “regulation,” this rule is exempt from being a “regulation” under the “local rule” exemption, as discussed below.

- (3) With respect to whether the rules contained in the Memorandum fall within any recognized exemption from APA requirements, generally, all “regulations” issued by state agencies are required to be adopted pursuant to the APA, unless *expressly* exempted by statute. (Gov. Code, sec. 11346; *United Systems of Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1010, 74 Cal.Rptr.2d 407, 411 (“*When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language.*”) (Emphasis added.)

Penal Code section 5058, subdivision (c), declares in relevant part the following:

“The following are deemed not to be ‘regulations’ as defined in Section 11342.600 of the Government Code:

- (1) Rules issued by the director or by the director’s designee applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

- (A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

- (B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public.”

Thus, the Legislature has provided an express statutory exemption for *local* prison rules, provided that certain conditions are met. In its response, the Department relies upon this exemption, contending that “. . . the memorandum does not need to be adopted pursuant to the APA, Government Code Section 11340 et seq., since it is merely a ‘local rule’ pertaining to that facility”⁵

We find that the following three rules contained in the Memorandum are exempt from being “regulations” subject to the rulemaking provisions of the APA under the “local rule” exemption (assuming the conditions of Penal Code section 5058, subdivision (c)(1), are satisfied):

- (1) “Financial Obligation includes both parties, participant and contest sponsor.” (Emphasis in original.)
- (2) “Game of Chance: Any contest where ‘probability’ is an integral component, i.e., Pro-Pick Em’ [sic], Pick Fours, Sports Picks, etc.” (Emphasis in original.)
- (3) “Departmental and institution policy clearly prohibits inmate participation in any advertised or media sponsored contest involving the possibility of winning prizes of a monetary value.”

Nothing in the documents filed in connection with this determination suggests the these three rules are anything other than “local rules” which apply solely to inmates housed at Folsom State Prison.

The “local rule” exemption does *not* apply, however, to the rule which reads as follows:

“If lottery tickets, etc., are discovered in incoming inmate mail the entire envelope and contents shall be returned to the sender with a preprinted notice to the sender which states: ‘Inmates are not permitted to receive or possess any instrument used in a game of chance (i.e., state lottery tickets, sweepstakes tickets, etc.). Please remove the unauthorized items(s) from this envelope and feel free to send the letter to the addressee’ [Emphasis in original.]”

⁵ Department’s response to the request for determination, December 12, 2000, page 3.

This rule regarding the particular procedure to be employed for the handling of incoming inmate mail containing instruments used in a “game of chance” is taken directly from section 54010.17 of the statewide DOM.⁶ Consequently, although this rule is set forth in a memorandum issued by the warden of Folsom State Prison, the rule is actually a rule that applies to prisons or other correctional facilities throughout the state.⁷

⁶ DOM section 12010.6, entitled “Department Operations Manual,” states in part the following: “[The] DOM contains policy and procedures for *uniform operation of the Department* and is issued *statewide* to inform staff of the approved procedures for program operations.” (Emphasis added.)

⁷ We note that section 54010.17 of the DOM is among a number of DOM provisions that have been designated as “not approved for use” within the Department (as listed in an “Administrative Bulletin” or “Notice of Change to Department Operations Manual” issued by the Department). However, despite this designation, the warden of Folsom State Prison has utilized DOM section 54010.17, directly quoting and specifically citing DOM section 54010.17 as authority, even though that section was “not approved for use” both before and after the date of issuance of the Memorandum. Notwithstanding that section 54010.17 and other such sections have been designated “not approved for use,” if they are not formally rescinded and deleted from the DOM, and continue to be available for use by institutions within the Department, we think these sections remain statewide rules of the Department subject to the APA.

The rule does *not* apply solely to a particular prison or correctional facility as required under Penal Code section 5058, subdivision (c). Consequently, the “local rules” exemption does not apply to this one rule. We are aware of no other APA exemption which would apply to this inmate mail rule. Therefore, this rule is subject to the rulemaking provisions of the APA.

DATE: August 15, 2001

DAVID B. JUDSON
Deputy Director and Chief Counsel

DEBRA M. CORNEZ
Senior Staff Counsel
Determinations Program Coordinator

BRADLEY J. NORRIS
Staff Counsel

Regulatory Determinations Program
Office of Administrative Law
555 Capitol Mall, Suite 1290
Sacramento, California 95814
(916) 323-6225, CALNET 8-473-6225
Facsimile No. (916) 323-6826
Electronic Mail: staff@oal.ca.gov

